

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Civil Action No. 99-CV-2496 (GK)
)
v.) Next Scheduled Court Appearance:
) Trial (Ongoing)
PHILIP MORRIS USA INC. (f/k/a)
PHILIP MORRIS INCORPORATED), et al.,)
)
Defendants.)

**DEFENDANTS' FIRST AMENDED
ANTICIPATED ORDER OF WITNESSES FOR TRIAL**

Pursuant to Order #471, ¶ IV.B, Defendants submit this amended identification of witnesses in the order in which Defendants anticipate presenting them at trial during Defendants' case-in-chief on "liability" issues. This identification is based upon the case after issuance of Order #886.¹

With respect to the "remedies" issues that will be addressed later in the case pursuant to Order #886, Defendants are not including in this list witnesses who may offer testimony relating to non-disgorgement remedies, and will identify such witnesses as required by the Court.² In addition, as previously indicated to the Court, Defendants anticipate that a number of the witnesses appearing in Defendants' liability case-in-chief may also be recalled to testify in Defendants' remedies case-in-chief.

¹ Defendants have previously noted, and incorporate by reference herein, their objections to Plaintiff's efforts to develop additional evidence during trial. *See* Defendants' Memorandum Regarding Non-Disgorgement Remedies Pursuant to Order #875 filed February 22, 2005.

² Defendants will identify witnesses for their remedies case-in-chief in accordance with the procedures set forth in Order #894 on April 11, 2005.

Defendants also reserve the right to supplement this order of proof with any of the witnesses previously identified by Defendants on their trial witness list on April 5, 2004.³

The first list identifies witnesses that Defendants currently anticipate calling for live testimony in Court during the Defendants' liability case-in-chief. The list also indicates whether each witness is being called as a fact or expert witness (or both). Defendants will advise the Court and Plaintiff in the event there are changes to the anticipated order of presentation of witnesses during trial.⁴ Defendants also anticipate scheduling an interim summation at the end of their liability case-in-chief, reserving their second interim summation for use during the remedies phase.

	Witness (Live)	Fact / Expert
1.	Dr. David E. Townsend	Fact / Expert
2.	Dr. Michael Dixon	Expert
3.	Dr. James A. Langenfeld	Expert
4.	Dr. Edwin L. Bradley	Expert
5.	Dr. William E. Wecker	Expert
6.	Dr. Michael W. Ogden	Fact
7.	Dr. Harmon C. McAllister	Fact
8.	Graham A. Read	Fact
9.	Dr. Bernard Scott Appleton	Fact
10.	Dr. Dennis D. Dietz ⁵	Fact
11.	Dr. Anthony Albino ⁵	Fact
12.	Dr. Peter P. Rowell	Expert
13.	Joseph Mulholland	Fact
14.	Victor D. Lindsley, III	Fact
15.	Lynn J. Beasley	Fact
16.	Bennett S. LeBow ⁵	Fact

³ Defendants reserve the right to add and call Nancy Brennan Lund as a live trial witness if Defendants Altria Group, Inc. and Philip Morris USA Inc.'s Motion to Reconsider Order #600 is granted.

⁴ In this regard, Defendants respectfully note that there were numerous instances during Plaintiff's liability case-in-chief where the order of witnesses changed due to unexpected delays in the examination of preceding witnesses requiring the re-ordering of the presentation of certain witnesses due to issues related to their availability to testify. Indeed, Plaintiff filed six amended lists on ECF regarding the anticipated order of witnesses during its liability case-in-chief. Defendants similarly will advise the Court and Plaintiff's counsel promptly if and when such issues arise during Defendants' liability case-in-chief.

⁵ These witnesses are being offered by Liggett only.

	Witness (Live)	Fact / Expert
17.	Ron Bernstein ⁵	Fact
18.	Dr. Donald Rubin	Expert
19.	Dr. Richard J. Semenik	Expert
20.	Dr. W. Kip Viscusi	Expert
21.	Dr. Alan Schechter	Expert
22.	Dr. James J. Heckman	Expert
23.	Michael E. Szymanczyk	Fact
24.	Howard A. Willard, III	Fact
25.	Dr. Richard Solana	Fact
26.	Dr. Jane Lewis	Fact
27.	David R. Beran	Fact
28.	Martin L. Orlowsky	Fact
29.	Susan Ivey	Fact
30.	Dr. Jerry Whidby	Fact
31.	Barbro L. Goodman	Fact
32.	Dr. Kenneth Podraza	Fact
33.	Dr. Richard Carchman	Fact / Expert
34.	Mark E. Greenwold	Fact
35.	Dr. Mace Beckson	Expert

The second list identifies those witnesses who are offered by Defendants by means of prior trial or deposition testimony. In some instances, the entire set of designations and counter-designations have already been offered during Plaintiff's case-in-chief, in which case Defendants will simply note the prior submission of those designations and objections, as well as identify any additional exhibits that may be offered with those witnesses during Defendants' case-in-chief. Defendants anticipate identifying and serving no more than eight prior witnesses in any given week during Defendants' case-in-chief, beginning March 7, 2005.

	Witness (Prior)
1.	Richard H. Amacher
2.	Dr. Stephen Marcus
3.	Dr. Patricia A. Richter
4.	Thomas G. Shanks
5.	Donald Shopland
6.	Charles O'Keeffe
7.	Dr. John Parascondola
8.	Dr. Sally M. Schneider

	Witness (Prior)
9.	Dr. Janis M. White
10.	Ronald Tully
11.	Dr. Julius B. Richmond ⁶
12.	Patrick G. Locke
13.	Patrick Aylward ⁷
14.	Dr. Alan Rodgman
15.	Dr. William S. Simmons
16.	Dr. Alexander W. Spears ⁷
17.	Dr. Edward A. Robinson ⁸
18.	Dr. Arnold T. Mosberg ⁸
19.	Dr. Christopher Proctor
20.	Dr. T.C. Tso
21.	Dr. Larry B. Jaycox
22.	John F. Martonik
23.	William A. Adams
24.	Gerald H. Long
25.	Kinsley Dey
26.	Edward A. Horrigan, Jr.
27.	Charles Kensler
28.	Neil E. Mellen ⁸
29.	Nicholas G. Brookes
30.	Paul Adams
31.	Ulrich G.V. Herter
32.	Sharon L. Blackie ⁸
33.	Lyle B. Smith
34.	Stephen R. Strawsburg
35.	Diane Stewart Burrows
36.	Claudia Newton
37.	Hugh Honeycutt
38.	Dr. Michele H. Bloch
39.	J. Kendrick Wells
40.	John Douglas Weber
41.	Donald W. Tredennick
42.	Monica M. Moorefield
43.	Martin Lance Reynolds ⁸

⁶ Defendants anticipate filing former Surgeon General Richmond's prior testimony with a statement regarding the purpose of this proffer.

⁷ Defendants are mindful that in Order #630 the Court ruled *in limine* that the prior testimony of these witnesses was inadmissible. Defendants intend to offer the prior testimony of these witnesses on additional grounds not addressed in Order #630.

⁸ Defendants will be submitting the prior testimony of these witnesses from depositions in this case in order to reduce the amount of time required to address live witnesses in Court.

	Witness (Prior)
44.	Mark Morrissey
45.	Carolyn G. Brinkley
46.	Kenneth Olden
47.	Dr. Roger A. Jenkins ⁸
48.	Murray G.C. Anderson
49.	Paul Wessel
50.	Mark Conkling ⁵
51.	Dr. David M. Burns ⁵
52.	Alison Kay Kinnard
53.	Dr. Frank Marsh
54.	Patricia F. Ittermann

Dated: March 14, 2005

Respectfully submitted,

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